

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2883 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Appearance:- JANI, Advocate, for the
Petitioners.
Mr. Trushar Mehta, Advocate for the
respondents.

CORAM:-MR.JUSTICE N.N.MATHUR

DATE:-23-4-1996.

ORAL JUDGMENT.

By way of this Special Civil Application, the petitioners have challenged the order of the learned Charity Commissioner, State of Gujarat dated 14-2-1995 passed in Misc. Application No. 55 of 1994, whereby he allowed the application filed by respondents no.1 and 2 u/s 41(A) of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the Act of 1950) and directed that they shall continue as trustees as far as they are

not terminated legally as the trustees and further a meeting of all the trustees registered in the P.T.R. should be called/convened and appointment of new trustees should be made as per the constitution and further direction was given that change report in this behalf should be produced in the office of the Assistant Charity Commissioner at Nadiad.

2. Petitioner no.1 Acharyashri Mahaprabhuni Ranavaswala Bethak Mandir Trust, Godhara District Panchamahals is a public trust registered under the provisions of the Act of 1950 bearing Registration No.A/394. As per Constitution of the Trust, the properties of the trust vest in the trustees. Number of the trustees are 9 to 11. Post of the trustee falling vacant due to resignation, death or ineligibility or for any other reason can be filled up by election of a person having requisite qualification amongst the followers of the "Pusthimargiya" devotees with 2/3 majority of the Board of Trustees. Section 17 of the Act of 1950 casts duty on the Public Trusts Registration Office or Joint Public Trusts Registration Office, to keep and maintain such books, indices and other registers as may be prescribed. Section 22 of the Act of 1950 provides that where any change occurs in any of the entries recorded in the register kept u/s 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where register is kept. In the meeting held on 26-7-1981, since Shri Sankalchand Mohanlal Mehta and Shri R.M. Vakil had expired, their sons, Shri Rameshchandra Sankalchand Mehta and Shri Ratilal Chandulal Chokshi were appointed as trustees by adopting the Resolution. The change was reported and the same was approved and the entry was made in accordance with the provisions of Section 22 of the Act of 1950 in the Public Trust Register(P.T.R. in short) maintained u/s 17 of the Act of 1950. Similarly, one, Shri Mahendrabhai was inducted as a trustee on 15-7-1983 and Dr. Krushnajivan Gandhi was also inducted as a trustee on 15-7-1986. Their names have been also entered into as trustees of the trust in the Public Trust Register. As such they have continued as Trustees for years. However, on 21-6-1994 four trustees assembled at Surat and convened trust meeting and adopted a resolution removing the trustees; Rameshchandra Sankalchand Mehta, Ratilal Chandulal Chokshi, Mahendrabhai Nathaji Parikh and Dr. Krushnajivan on the ground that they were not elected by

the Board of Trustees with 2/3 majority and as such their election was void ab-initio. This removal caused four vacancy in the trust. Two more vacancies occurred on account of death of Occhavalal Bhogilal Soni and Maneklal Maganlal Gandhi. Against these six vacancies in the same meeting petitioners no. 6 to 11 were elected as Trustees.

3. Ousted trustees Chokshi Ratilal and Mehta Rameshchandra respondents no. 1 and 2, made a complaint to the Joint Charity Commissioner that the opponents Trustees in collusion with some outsider are indulging in activities which are prejudicial to the interest of the trust. Serious allegation of Financial irregularities was also made against the said Trustees. It is also alleged that meetings of the trust are being called without notice and arbitrary and prejudicial resolutions are adopted without agenda. They are over looking the feelings of the devotees. They are not keeping proper accounts and indulging into irregularities of serious nature. They also complained that without proper process being followed u/s 22 of the Act of 1950 for entering names in P.T.R. Ousted trustees are not allowed to function and so called elected trustees are being allowed to interfere in the functioning of the trust. It was thus prayed that

"the opponents or their associates, representatives, or agents should not stop the applicants herein from discharging their duties as the Trustees of the opponent no.1 Public Trust and such directions are required to be issued to the opponents. Further, so far as order is not passed by the office of the Assistant Charity Commissioner, Nadiad for including in P.T.R. the names of opponents no.11 to 15 being duly appointed through change as per provisions of Section 22 of the Act, they should be restrained from interfering in any manner whatsoever being the Trustees of the Opponent No.1 Trust nor should involve themselves in the administration and affairs of the Trust and such directions are required to be issued to them. It is also necessary to give instruction/direction to the opponents no. 1 to 10 to the effect that before selling away any moveable property of the said Trust, they should proceed in the matter as per rules by passing a resolution unanimously by the Trustees duly registered in Schedule 1 to P.T.R. and after making necessary arrangement for holding the auction. It is also necessary to

issue necessary directions restraining the said opponents from creating any hurdle in checking of the whole record, financial and accounts literature, Resolution Book, etc. It is also necessary to issue direction to take any decision only by keeping with them the Trustees of the Board of Trust. Such an application for necessary direction is filed vide Exh.4."

4. This application was subsequently transferred to the Court of the Charity Commissioner. It was submitted on behalf of the newly elected trustees that the application was not maintainable under the provisions of Section 41 (A) of the Act of 1950. It was submitted that on 21-6-1994 the meeting was held of legally appointed and living Trustees of the Trust at Surat and in the said meeting new trustees were elected by adopting an unanimous resolution in accordance with provisions of the Trust Deed. It was pointed out that in view of Clause 3 of the Trust Deed vacancy in the trust can be filled up only by electing the person having requisite qualification and with 2/3 majority of the Board of Trustees. It was also stated that appointment of the new trustees was ab-initio void as they were not legally appointed by 2/3 majority of the Board of Trustees. In view of this, their election as trustees was declared to be illegal.

5. The learned Charity Commissioner expressed that once the name of the trustee is entered in the Public Trust Register(P.T.R.) as per the procedure provided under the law then for deleting such names from the P.T.R., the legal remedy is by way of appeal under Section 70 of the Act of 1950 and in the last, Revision Application under Section 70A of the Act of 1950. Thus, in the opinion of the learned Charity Commissioner, once the name of the trustee is entered in the P.T.R. change can be effected by making a proper application under the Act of 1950, but the trust cannot take up the matter on its own and take decision whether the appointment of the trustee is valid or not. In view of this, the learned Charity Commissioner by the impugned order dated 14-2-1995 ordered thus:-

"The application of the applicants is hereby allowed. They shall continue as Trustees as far as they are not terminated legally as the Trustees. One meeting of all the trustees registered in the P.T.R. should be called/convened and appointment of new trustees should be made as per the constitution and it is

further directed that a change report in this behalf should be produced in the office of the Assistant Charity Commissioner at Nadiad."

6. This order has been impinged in this writ petition. Mr. Jani, learned Advocate for the petitioners has challenged the impugned order of the learned Charity Commissioner mainly on the following grounds.

- i. That Section 41 of the Act of 1950 does not empower the Charity Commissioner to adjudicate upon the nature of controversy as involved before him.
- ii. That simple entry of the name of the trustee in P.T.R. is not a conclusive proof of valid election.
- iii. That the entire issue with respect to election of the trustees is pending inquiry before the Assistant Charity Commissioner under the provisions of Section 22 of the Act of 1950 and as such the learned Charity Commissioner should not have adjudicated the matter till conclusion and decision of the inquiry.
- iv. That the impugned order is in violation of the principles of natural justice inasmuch as learned Counsel for the petitioners was not heard.

7. So far as the first ground is concerned, learned Advocate for petitioner Mr. Jani submits that the inquiry with respect to election of trustee is outside the purview of Section 41 (A) of the Act of 1950. He submits that the powers of the Charity Commissioner u/s 41-A are of administrative nature to issue directions to any trustee of a public trust or any person connected therewith to limited extent to ensure that such trust is properly administered and the income thereof is properly accounted for or duly appropriated. He relied on the decision of this Court in the case of Syedna Mohamed Burhanuddin the 52nd Dai-ul-Multhaq and Head of the Dawoodi Bohra Community Vs. Charity Commissioner, Gujarat State, Ahmedabad and others, reported in XII(1) GLH 331.

8. On the other hand Mr. Trushar Mehta, learned Advocate for the respondents submit that at the first instance the Charity Commissioner has power to deal with

the controversy involved in the present matter as it essentially concerned with the proper administration of the trust. In alternative, he submits that the Charity Commissioner has supervisory power as contained under Section 69 (a) and (h) of the Act of 1950. He has also invited my attention to the provisions of Section 37 of the Act of 1950 which empowers the Charity Commissioner, Deputy Charity Commissioner or Assistant Charity Commissioner, to have supervision over the public trust. He has referred to the decision in the case of State of Bihar and another Vs. J.A.C. Saldanna and others, reported in AIR 1980 SC 326 and contended that the power of superintendence would comprehend the authority to give directions to perform the duty in a certain manner, to refrain from performing one or the other duty, to direct some one else to perform the duty and no inhibition or limitation can be read in this power unless the section conferring such power prescribes otherwise.

9. Mr. Trushar Mehta, learned Advocate for the respondents has also referred to the decisions of the Apex Court reported in (1) 1992 SCC 573, (2) 1993 JT 173, (3) AIR 1992 SC 1033, (4) AIR 1992 SC 1535 and (5) AIR SC 573, and contended that simply referring to wrong provisions of the law will not materially affect the order if the authority otherwise has power.

10. In order to appreciate the controversy it is appropriate to refer Section 41A of the Act of 1950, which reads as under :-

"41A (1) - Subject to the provisions of this Act, the Charity Commissioner may, from time to time, issue directions to any trustee of a public trust or any person connected therewith to ensure that such trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purpose of the trust.

(2) It shall be the duty of every such trustee and person to comply with a direction issued to him under sub-section(1).

11. A reading of sub-section (1) of Section 41-A of the Act of 1950 clearly empowers the Charity Commissioner to issue directions for the following purposes:-

(a) to ensure proper administration of a public trust, and

(b) for proper accounting of its income, or

(c) for due appropriation and application of
the income to the object and for the
purpose of the trust.

Apart from Section 41-A, the Charity Commissioner has supervisory power over the public trust as provided under sub-clause (a) and (4) of Section 69 of the Act of 1950. Thus, the combined reading of the provisions of Section 41-A (1) along with Section 69(a) of the Act of 1950 shows that the Charity Commissioner has powers of supervision over the public trust for the better and more efficient and clean administration of the trust. This power is however circumscribe by use of the expression "subject to the provisions of the Act". Thus the Charity Commissioner will not have the power in the field which has been vested in different authority under the Act. The question of adjudication of any controversy or dispute shall be outside the purview of the Charity Commissioner, Considering the provisions of Section 41-A. This Court in Syedna Mohamed B. V. Charity Commissioner, reported in 12 G.L.H. 331 held that the provisions of Section 41-A comes into play as remedial measure to meet peculiar situation arisen in the administration of the public trust. The Court said, thus

"Section 41-A is to be brought into play where
some exceptional, unforeseen, unexpected or
peculiar situation has arisen in the
administration of public trust which is required
to be cured by remedial directions or where
circumstances has arisen foreboding such
situation which requires a preventive measure in
the form of direction."

12. Thus, from the aforesaid discussion it emerges that irrespective of reference of any provision of the Act of 1950, the Charity Commissioner has wide supervisory power over a public trust to issue any direction of remedial or preventive nature to perform the duty in a certain manner or to refrain from performing one or the other duty in certain compelling circumstances, which calls for interference, to secure objectives of the public trust by a bonafide and efficient administration, with the limitation that he shall not exercise of the powers which have been conferred on any other authority under the Act of 1950.

13. Applying to the facts of the case the learned Charity Commissioner has rightly refrained from

adjudication of dispute with respect to election of the trustees, and left it to be decided by the Assistant Charity Commissioner under Section 22 of the Act of 1950. However, as an interim arrangement not only to ensure proper administration of the public trust but also to remove any chance of misutilisation of funds and the property taking advantage of presence of abruptly or dramatically inducted or landed trustees, the Charity Commissioner in the peculiar situation has issued the impugned directions which is in my view absolutely legal, just and proper. The incomprehensible act that four trustees (as per the Constitution of the Trust there must be 9 to 11 trustees) who did not raise any objection with respect to election of four co-trustees for years (ranging from 9 years to 13 years) but abruptly on 21-6-1994 raised their heads saying that the elections are void ab-initio, as such without notice, without matter being on agenda adopted resolution of their removal and also elected six new trustees, conveniently overlooking the fact that their names still continue in P.T.R., coupled with another important fact i.e. the serious allegation of mismanagement and misutilisation of funds, laid requisite strong foundation for exercise of supervisory power by the Charity Commissioner, u/s 41-A read with Sec, 69(a) of the Act of 1950.

14. The second contention that simple entry of name of trustee in P.T.R. is not a conclusive proof of valid election, is misplaced, as this question does not arise for consideration in the present Special Civil Application as this question can be raised in proceedings u/s 22 of the Act of 1950. Similarly, the third question is also not required to be separately answered in view of discussion and finding on first contention.

15. The fourth and the last contention is that the impugned order is bad in law, as it is in breach of principles of natural justice. It is submitted that petitioner no.6 Kantilal A. Parikh who was also an advocate appeared in party in person, was heard on factual aspect on 19-9-1994, and the matter was adjourned for further argument on law points for 1-10-1994. However, an information was received on 30-9-1994 that the matter is adjourned to 16-10-1994, and some more dates were given. Affidavit of Mr. K.A. Parikh has also been filed. Shri Parikh died on 20-6-1995. His son Advocate A.R. Shah has also filed an affidavit. I do not propose to enter into the controversy as it is admitted that they were heard on factual aspect, the only grievance is that the matter was adjourned for argument on legal point, but they were not heard because of the

pursis served by the opposite party that argument of the parties have been heard and such order may be pronounced. At the first instance, I have heard learned Counsel for the petitioners on factual as well legal aspect at length as even if any prejudice is caused on this count, the same is cured. Post hearing is well recognised now. Secondly, exercise of supervisory powers under the Act of 1995 are of administrative nature and the principle of natural justice are not strictly required to be followed in all cases. This Court in Dowodi Bohra Community Case (12 G.L.H. 331) has held thus:-

"So far as the nature of directions contemplated by Sec. 41A is concerned, on analysing its contents and comparing them with the provisions of Sec. 32 to 41 of the Act, there is little doubt that they are administrative in character. They are contended to be issued for better and more efficient administration of public trust. No question of adjudicating any controversy, dispute or lis arises thereunder. The object of Section 41-A is to streamline the administration of public trusts and to ensure more effective implementation and enforcement of the provisions of the Act. Since they are not quasi judicial directions, the question of complying with principles of natural justice does not arise. Therefore, compulsion to hear a trustee, before directions are issued to him u/s 41-A as in the case of quasi judicial matters can not be inferred".

The learned Charity Commissioner has not decided any controversy or dispute. He has only passed order of interim arrangement in the interest of the public trust till the matter is decided under the appropriate provisions of the Act of 1950. It may also be stated that Late Shri K.A. Parikh, an Advocate was one of the newly elected trustees and he was appearing only for him as a party in person. He was unfortunately died during the pendency of the petition and as such his name has now been deleted from the array of the petitioners. The grievance of denial of hearing was of Late Shri Parikh and not of petitioners no.1 to 5. He being a person interested in the litigation could not have appeared for Co-nonapplicants before the Charity Commissioner as required by rule of professional ethics. Learned Counsel says that Shri Parikh was appearing only for him. He was right in doing so.

16. At this stage, it is pointed out by Mr. Mehta, learned Advocate for the respondents no.1 and 2 that inspite of the order of the Charity Commissioner passed way back in the year 1995 i.e. 14-2-1995 directing that the respondents - applicants before him will continue as trustees as far as they are not terminated legally as trustees and further direction was given that one meeting of the trustees registered in the Public Trust Register should be called/convened as per the Constitution of the Trust. Inspite of that no meeting has yet been convened.

17. Mr. Jani, learned Advocate for the petitioners submits that no affidavit in this regard has been filed and such an issue has been raised at the conclusion of the dictation of the judgment, as such seeks some time to collect the requisite information as to whether the order of the Charity Commissioner dated 14-2-1995 has been complied with or not.

S.O. to 30-4-1996.